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National Symposium on Indigent Defense:
Looking Back, Looking Forward 2000-2010**

Workshop 3-A: Collaborations with the Private Bar

**Moderated by Robin M. Maher
Director, ABA Death Penalty Representation Project
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Workshop 3-A: Collaborations with the Private Bar

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Don't RIF Pro Bono

Despite downturn, law firms should make the right choice for the future.

By Esther F. Lardent
Legal Times
March 02, 2009

The economy is in free fall, and economists and commentators seemingly have no ability to predict either the depth of that fall or the duration of this crisis.

In the legal profession, major law firms, after almost a decade of double-digit year-over-year growth, are experiencing the most severe contraction in decades. At the same time, firms also have committed in the past to provide pro bono services for those who desperately need it. What is going to happen to that commitment in these uncertain times?

Reductions in force at large law firms now number in the thousands, and many believe that additional RIFs are inevitable. Unlike other recessions, where countercyclical practices enabled firms to remain relatively stable despite downturns in mergers and acquisitions, initial public offerings, and other transactional work, the anticipated spike in litigation, regulatory practice, bankruptcy, and the like has failed to surface.

Economists have long deplored the idiosyncratic economic model of major law firm practice—in which an increase in starting salaries at one firm almost inevitably creates a domino-like ripple effect of salary increases throughout the legal economy and law firms make decisions about the size of their new associate class two years before entry. Law firms are now painfully experiencing the impact of these practices which make it very difficult for firms to manage their greatest expense—labor costs.

And, after years of idle threats and complaints, corporate clients are finally acting on their concerns about firm pricing strategies and the responsiveness of outside law firms to their needs. Initiatives like the Association of Corporate Counsel “Value Challenge” signal the likelihood of profound change in how firms hire, work, and bill.

Given the perfect storm of all of these pressures and changes, it is not surprising that many law firm leaders are overwhelmed and exhausted, caught between their responsibilities to their firms, lawyers, and employees, and the larger economic factors over which they have no control.

In the midst of all this turmoil, transformation, and angst, it would be understandable if law firm leaders did not focus on pro bono.

Although the past decade has seen a profound sea change in the role and level of pro bono at major law firms—pro bono hours have almost tripled at large firms over the past decade—some firm leaders may view pro bono as an artifact of the robust economy of the past. Others may assume, given the strength of their firm’s pro bono culture and practice, that this is one area of firm leadership and management that they can delegate to others.

But for a host of reasons, both principled and practical, maintaining pro bono work should be

an important issue on the agenda of large firm leaders, even with the economic situation bearing down upon them.

DESPERATE NEED

One obvious and compelling reason for a continuing and strengthened focus on pro bono is the growing, desperate need for volunteer legal assistance to the poor and disadvantaged. As commentators have noted, when the economy catches cold, poor people get pneumonia.

Not only has the number of Americans living in poverty increased dramatically during the past year, the frequency of legal problems, emerging legal issues, and the complexity of the legal needs of the poor and disadvantaged have grown exponentially as well.

Public interest, legal aid, and pro bono programs—chronically underfunded, understaffed, and underresourced to begin with—are facing a grim economic reality. Federal funding for programs remains relatively flat and, in 2009 dollars, lower than funding available 15 years ago. At the same time, all of the primary sources of support for these programs—foundation grants, state and local government support, and charitable giving from the legal community—have sharply declined.

More clients, more problems, and far fewer staff and resources—we are facing a justice crisis, and pro bono resources, particularly those of lawyers in major law firms, are more essential than ever before. We are a profession, and our moral and ethical obligation to serve is greater today than ever before.

Firm leaders should focus on pro bono because it is a core value of the legal profession. But, in addition, maintaining and supporting effective pro bono programs can and will, if undertaken carefully and thoughtfully, strengthen their firms as institutions and align with their business and revenue goals. Pro bono is not just the right thing to do in the current climate. It is also the smart thing to do.

ADDING VALUE

Pro bono can address essential needs and difficult issues faced by law firms and their leadership in a turbulent economic time. It is an excellent low-cost tool for training, talent management, professional development, and mentoring—firm activities that are even more important when clients are balking at paying for the time of inexperienced associates.

A number of firms are using pro bono opportunities to keep valued, but underutilized, attorneys active, engaged, motivated, and upbeat during a period of low client demand. And for lawyers who are retooling from a moribund practice area to a new specialty, pro bono can offer the opportunity to learn new skills and to establish the lawyers' visibility in a new area of practice.

Pro bono also can offer a humane and positive solution to firms dealing with overcapacity. A growing number of firms that are delaying the start date of new associates are encouraging those associates to spend the time before their deferred arrival working, with a modest stipend from the firm, at a public interest organization. And, as firms increasingly make the difficult decision to lay off their lawyers or rescind offers, easing departures from the firm by offering modest financial support to transitioning lawyers that enables them to spend time

working for a pro bono group cushions the psychic impact of RIFs on the lawyers who are leaving and those who stay.

ENHANCING MORALE

The rumor mills—electronic and human—are working overtime. Firm lawyers, partners and associates alike, are anxious and stressed. Placing an emphasis on the firm's unswerving commitment to pro bono can be an antidote to anxiety and distress.

Firm leaders should understand that, in the absence of any signal on their part, lawyers at their firms may assume that pro bono is no longer considered to be an important part of the life and work of their firms. It is essential that top firm leadership clearly and forcefully reaffirm that commitment and the importance of pro bono and that they ensure that other firm leaders—office managing partners, practice group heads, and the like—send the same message.

Pro bono is an important signifier at this uncertain and unstable time. It signals a focus on commitment to long-term goals not just short-term exigencies, expectations for a better future, the firm's engagement with its lawyers and its community, and a larger vision of the role of the firm and the law.

In doing so, it eases anxiety and creates a sense of common purpose and stability. And, by encouraging team work and shared values, it provides a sense of unity and belonging that will reinforce lawyers' commitment to and respect for the firm.

REMEMBER YOUR CLIENTS

And remember your clients. What are in-house corporate legal departments doing in these difficult and challenging days? They are, at an astonishing pace, creating formal pro bono programs and expanding their existing pro bono efforts.

Corporate Pro Bono, the Pro Bono Institute's initiative in support of in-house pro bono in partnership with the Association of Corporate Counsel, is busier than it has ever been. The project has worked with literally hundreds of legal departments, including virtually all of the Fortune 100 companies, during the past two years.

Most notably, the legal departments in companies in the greatest distress—including financial institutions and major manufacturers—are actually broadening their pro bono efforts and participation. Why? Just as for law firms, pro bono for these companies and their legal departments is even more important and valuable in difficult times.

The growing acceptance of and appetite for pro bono in the in-house legal community offers an unparalleled opportunity for major law firms with strong pro bono programs. Your firms have the substantive expertise, infrastructure, relationships with community groups, and exciting and worthy pro bono projects that in-house legal departments are seeking. Top firm leadership and relationship partners, in conjunction with the firms' pro bono leaders, can and should approach their corporate clients to offer support and partnership for clients' nascent pro bono efforts.

We all know that in addition to expertise, relationships, fit, and shared values are key to

attracting and retaining corporate clients. Pro bono is becoming an important and highly beneficial element in these law-firm/client relationships.

Publicly and wholeheartedly supporting pro bono in these challenging times is essential. It is the right thing to do. It is the wise thing to do. And, in both the short term and the long term, it will make law firms, the justice system, and our nation stronger.

pro bono connection



An update from The ABA Standing Committee on Pro Bono and Public Service
Volume 8, Number 2 • August 2008

Neil McKittrick: A Pro Bono Journey from Law School to Law Firm

In 2001, Neil McKittrick received a Pro Bono Publico Award from the ABA Standing Committee on Pro Bono and Public Service for his commitment as a private attorney to providing legal services to the poor; demonstrated through his work on high profile pro bono disability cases and his long history of pro bono service. Since the time of the award, McKittrick has continued to work on disability cases as well as cases in the areas of immigration, prisoners' rights, fair housing and others. In this issue, McKittrick speaks about his motivations for doing pro bono work and his continued dedication to pro bono since the receipt of the ABA award.

Pro Bono Connection: Describe your involvement in pro bono and how this has changed and developed over time?

Neil: I have been involved in pro bono legal and community service work since law school. In law school, I did work for a legal services agency, and I was the director of the student funded fellowship program—a program that provided summer stipends to students interested in working in public interest law jobs. I also volunteered as a ski instructor for kids with disabilities. After I graduated, I chose my first law firm based in large part on its commitment to pro bono work and its long tradition of taking on significant pro bono matters. As an attorney, I began a relationship with the disability rights organization, The ARC of Massachusetts, and with this organization, I became involved in disability rights cases. The organization asked for my assistance to address what had become a social services crisis in Massachusetts—the extensive list of adults with mental retardation who were waiting for community-based residential services. As a result, we filed a class action lawsuit, *Boulet vs. Cellucci*, on behalf of more than 3000 adults with mental retardation and developmental disabilities who the Commonwealth of Massachusetts had placed on the waiting list for services. Most of these adults lived with their parents and had been on the waiting list for decades. The Court granted summary judgment in our favor, and agreed with our argument that, under the Medicaid Act, the State had to provide services within 90 days. Ultimately, however, because of the impracticality of implementing quality services so quickly for the whole class, we entered into a five year settlement agreement pursuant to which the State agreed to provide \$114 million of services to all persons on the waiting list, even if they were not eligible for Medicaid services. During the implementation of the settlement agreement, I monitored the settlement as class counsel. I also represented individual class members in disability actions as the need arose.



Neil McKittrick

While working on *Boulet*, I also worked on other disability rights cases. I was Counsel of Record on an *amicus curiae* brief filed in the U.S. Supreme Court in *Olmstead v. L.C.*, a landmark Americans with Disabilities Act (“ADA”) case, in which the Supreme Court held that the ADA required the State of Georgia to provide treatment in the community to two adult women with mental retardation, rather than confine them to an institution against their will.

I was also co-counsel on another *amicus* brief filed in the Supreme Court in support of professional golfer Casey Martin in his successful ADA case against the PGA Tour, in which he sought to use a golf cart in PGA tournament play as an accommodation for his disability.

In addition to my work on behalf of individuals with disabilities, I have handled asylum, prisoners' rights, landlord/tenant and fair housing cases. I have also worked on voting rights, death penalty, and employment pro bono cases, among others.

PBC: What benefits do you personally get from doing pro bono work?

Neil: It is a great feeling to be able to help vindicate someone's rights and achieve justice, even in a small way. In my pro bono work, I have been fortunate to be able to help individuals or groups of people vindicate their legal rights, achieve justice and effect social change in small ways through the legal system. There can be no higher calling for a lawyer. For example, the class in *Boulet* would not have received services to which they were legally entitled if they had not been successful in their lawsuit. It was a great privilege to represent families who had provided care to their loved ones for years, saving the government hundreds of millions of dollars and who only wanted to ensure that their loved ones would be cared for when their families could no longer do it themselves.

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Neil McKittrick

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PBC: What are the biggest challenges you face in doing pro bono?

Neil: My biggest challenge has been balancing the number of hours of pro bono with my paid work. My law firm is a business, so I have to generate revenue for the firm, but there are only so many hours in the day. I have never felt pressure from my firm, Goulston and Storrs (or my previous firm, Hill and Barlow), to work on fewer pro bono matters, but the reality is that I have an obligation to my partners to contribute to the business. For lawyers in private practice to do pro bono work, you have to be in a firm that supports the pro bono work and treats pro bono cases like any other case—contributing the resources, covering the expenses, etc. I have been fortunate to be in a position in which I have been able to do more than 300 pro bono hours many years, and double that amount at the height of the *Boulet* litigation.

PBC: How have your various employers been supportive of pro bono and what are the most important steps employers can take to encourage pro bono work?

Neil: Law firms or other employers can make sure that the obligation of a lawyer to provide services to their community is part of their core values and part of the culture of the firm. For example, law firms can make a commitment to pro bono and community service work an express part of their mission statement. Pro bono work should also count toward the legal services hours an employee is expected to perform. Some firms put a limit on how much pro bono a lawyer is permitted to do—I think that's a mistake. I have been very fortunate to work at firms whose culture and tradition includes support of pro bono work. I would suggest that lawyers select firms that are supportive of pro bono work in this way.

PBC: How do you choose the pro bono projects on which you work?

Neil: Many of my cases have come to me through my personal connections. I became involved with disability pro bono cases this way. I am also the Northeast Regional Co-chair for the national Lawyers' Committee of Civil Rights Under Law, based in Washington, D.C., and I am on the board of the Boston Lawyers' Committee for Civil Rights, and I have handled cases in the voting rights, employment discrimination and fair housing areas referred by the Lawyers' Committee. I have also been involved in some educational adequacy cases, involving state constitutional challenges to how public education is funded through my work on the board of a Massachusetts organization known as the Early Education for All Campaign. Being involved in various civic undertakings has been the key to my being exposed to exciting, challenging pro bono work.

PBC: What advice would you give to other attorneys wanting to get involved in pro bono work?

Neil: There are many opportunities out there and unfortunately much work that needs to be done. Lawyers who are interested should choose something that they care about. They should have a passion or a particular expertise in the area. The bottom line is to just do it—it is personally gratifying and for many of us, it is the reason we went to law school in the first place. Lawyers can reach out to organizations and/or a number of firms will internally refer cases for representation. Lawyers should do whatever it takes to get themselves out in their communities and try to get involved.

PBC: How do you send a message to young lawyers that doing pro bono work is important?

Neil: I try to get young lawyers to

help on my pro bono cases. As a firm, we emphasize to young associates that their pro bono hours are treated the same as their billable ones. Our pro bono committee makes presentations to the summer associates about pro bono, and we have lunches periodically at which a pro bono client often presents its story. Also, when a pro bono case comes in, we staff the matter through the regular assignment pool so a lawyer might receive it even without asking to do pro bono work. It is treated like any other legal assignment. In addition I may recruit someone personally on a case if I think he or she would have an interest or would be a good fit for the matter.

We require that a partner be assigned to supervise every pro bono matter—regardless of who brings the case in. We try through the assignment process to get partners who do not normally do pro bono work to take pro bono cases. And, we provide all different types of pro bono cases (transactional, trusts and estates, etc.) to appeal to the different practice areas of the firm.

PBC: Why is it important for both partners and associates to do pro bono work?

Neil: Unless partners do pro bono work, associates will not believe that there is a commitment to it on the firm's part. If a firm is going to be serious about the role of pro bono in its mission and culture, partners have to be involved and must demonstrate to associates that it is not just possible to do significant pro bono and succeed within the firm, but it is part of what makes a successful lawyer within the firm.

PBC: How much pro bono is enough? How do you promote balancing time spent on pro bono activities with work for paying clients?

Neil: Everyone has to come to some

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Neil McKittrick

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balance for him or herself. Pro bono work can have a significant benefit to the business even though it does not generate income. It can generate positive feelings about the firm in the community. There is also the important PR impact of pro bono work. Pro bono work is good

for a firm's image, and it can be a useful tool for recruiting associates.

PBC: Any last words?

Neil: Being a lawyer means more than being involved in work for paying clients. As officers of the court, we have an obligation to work for the furtherance of justice. Part of the way lawyers can further justice is by representing

clients who would otherwise not be able to vindicate their rights. By doing pro bono work, lawyers perform a vital role in society and in the legal system, and we as professionals should do everything we can to ensure that young lawyers continue to have sufficient opportunities to undertake pro bono work and continue to be committed to it.

2008 ABA Pro Bono Publico Award Recipients

The ABA Standing Committee on Pro Bono and Public Service has recognized three individual lawyers, a law school and a law firm that have demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged. As the recipients of the 2008 ABA Pro Bono Publico Award these recipients will be honored on August 11 at the Pro Bono Publico Awards Assembly Luncheon during the ABA Annual Meeting in New York City.

The Pro Bono Committee received 26 nominations for the 2008 Award. After a very thorough review the committee selected the following lawyers and law firms as recipients of the 2008 Award:

Craig Cannon

Craig Cannon of Womble, Carlyle, Sandridge & Rice provided approximately 700 hours of pro bono in 2007. Since 2006,

he has served as the National Coordinator of the American Bar Association's Disaster Legal Services Program, managed by the ABA and FEMA. Cannon was also the lead drafter of a new memorandum of understanding between the ABA and FEMA. His contributions to the recovery efforts in New Orleans included spending four weeks during the summer of 2006 as a team leader providing direct assistance to Katrina victims.

Over the past 15 years, Cannon has significantly taken leadership roles in various local, state and national projects. Since 2005, Cannon has provided pro bono legal assistance to numerous charitable institutions, including a local charter school, the local Humane Society, a local historical museum, and the local United Way.

For the past few years, Cannon has planned and helped to implement the project

"When Duty Calls." One of the focuses and goals of this project is to train as many attorneys as possible on how to effectively file disability claims on behalf of military veterans. Since the project's implementation, hundreds of attorneys have been trained to provide pro bono legal services to over thousands of military veterans.

Fordham University School of Law (Public Interest Resource Center)

Founded at Fordham University School of Law in 1992, the Public Interest Resource Center (PIRC), guided by the leadership of Tom Schoenherr (currently the Assistant Dean for Public Interest and Director of PIRC) and John Ferrick (currently the Norris Chair of Law to Public Service), among others, and driven by succeeding classes of highly

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2008 Equal Justice Conference

The 2008 ABA/NLADA Equal Justice Conference brought over 1,000 attendees to Minneapolis in May. This year's theme "Pursuing Justice: Balancing Challenges and Opportunities" was woven throughout a range of innovative and dynamic programming. New networking opportunities such as speed networking, "want-ads", and a poster session provided several opportunities for conference attendees to interact and to learn about various projects. By providing more than 100 different programs, the conference created a forum for members of the legal services and pro bono communities, private bar, law school leaders, corporate counsel, judges, and other stakeholders in the civil legal services delivery system to share ideas and learn about new and unique ideas for serving the legal needs of the poor. Jointly sponsored by the ABA Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association, the Equal Justice Conference is the largest conference in the country focused on the civil legal needs of the poor. The 2008 conference featured keynote speakers professor Peter Edelman, Congressman Keith Ellison, and ABA President William H. Neukom. Planning is already underway for a 2009 conference that will even exceed the 2008 event. Mark your calendars now for the 2009 Equal Justice Conference, to be held May 13 through 16, 2009 in Orlando.

Pro Bono Connection is a biannual update by the American Bar Association Standing Committee on Pro Bono and Public Service for the news and information exchange needs of pro bono supporters. The views expressed in *Pro Bono Connection* are those of the authors and do not necessarily represent the policies of the American Bar Association. The contents of this newsletter have not been approved by the ABA House of Delegates and do not constitute ABA policy.

Standing Committee on Pro Bono and Public Service – Mark I. Schickman, **Chair**; Peter Carson, Rory Fitzpatrick, Josephine McNeil, Steve A. Nissen, James J. Sandman, Ada Shen-Jaffe, Honorable Richard B. Teitelman, Suzanne Turner, Carole Lynch Worthington; **Special Advisor** – Ivan Fong; **Board Liaison** – Kathleen Hopkins; **Committee Counsel** – Steven B. Scudder; **Assistant Committee Counsel** – Jamie Hochman Herz; **Staff Assistant** – Meaghan Cotter; **Administrative Assistant** – Jessica Watson; **Center for Pro Bono Director** – Anthony Barash.

Publico Award

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motivated public interest law students, has established itself as a nationally heralded and emulated law school pro bono program and public interest center that is a model for law schools, not only throughout greater New York, but throughout the country.

Nearly 500 Fordham Law students each year participate in some form of pro bono or public service through PIRC, which is staffed by four full-time professionals and administers eighteen separate student-run volunteer programs. Last year, the class of 2007 contributed over 100,000 hours of pro bono or public service through PIRC organizations, internships, externships, clinics and independent projects.

Some of PIRC's programs include: (1) the Domestic Violence Awareness Center, through which students accompany domestic violence victims to court and participate in the Uncontested Divorce Project; (2) the Death Penalty Defense Project, including pro bono legal assistance to death row inmates and public comment on capital crimes rule-making; and (3) the Housing Advocacy Project, through which students defend clients at administrative hearings and provide support to a local affordable housing legal services program fighting against evictions in housing court.

In addition, PIRC sponsors student internships with non-profit organizations and government agencies throughout the country and awards Stein Scholarships to twenty students in each class year to develop public interest careers.

Sarah Michael Singleton

Sarah Michael Singleton's nomination was submitted by the President of the State Bar of New Mexico, with the support of the Board of Bar Commissioners, and the endorsement of no fewer than sixteen of the past Presidents of the New Mexico Bar. She also received letters of support from six separate legal services providers who spoke of the unique role Singleton has played in leading the movement to provide access to justice and legal services to New Mexico's poor.

As President of the New Mexico State Bar in 1995-1996, Singleton convened

the state's symposium on strategies for expanding access to justice. She served on the Board of Bar Commissioners from 1989-1997. She also created the Lawyers Care Program, a program of the New Mexico State Bar developed for the purpose of referring cases to the private bar in the face of federal spending cuts to New Mexico's legal aid programs.

Following her term as State Bar President, Singleton served as co-chair of the State Bar's Legal Services and Programs Committee, responsible for addressing access to justice issues. She fought for and helped persuade the State Legislature to provide funding for legal services, resulting in \$2.5 million in annual funding. She served as the State Bar's appointee to the Civil Legal Services Commission, responsible for distributing those state funds to organizations serving the legal needs of the poor. Singleton has been the Co-Chair of New Mexico's Commission on Access to Justice since its inception in 2004.

Singleton has been active in the cause of access to justice and provision of legal services to the poor beyond the borders of New Mexico. Most recently, in 2006, Singleton was appointed by the President and confirmed by the United States Senate to serve as a member of the Board of the Legal Services Corporation.

David A. Kutik

David A. Kutik of Jones Day in Cleveland, Ohio has been actively involved in pro bono efforts throughout his 28 year legal career. As a bar leader, a leader in his law firm and an active practitioner, David has advanced the cause of providing legal services to those most in need but least able to afford them.

Kutik served as President of the Cleveland Bar Association in 2004-2005, and one his primary objectives was to encourage and foster the growth of pro bono commitment from the law firms and law departments throughout the greater Cleveland area. His initiative, *Our Commitment to Our Community*, resulted in 2,000 lawyers from 28 law firms and three law departments delivering over 70,000 hours of pro bono service. Kutik continues to be very active in fostering a pro bono commitment. In his role as Vice President of the Legal Aid Society in Cleveland, he chairs its

Pro Bono Committee. Working with the Legal Aid Society he established a Volunteer Lawyers Program which has in turn established a number of clinics providing free legal assistance to those in need. In addition, he currently chairs the Ohio State Bar Association Pro Bono Task Force. In that position, he has helped involve the judiciary in Pro Bono programs as well.

Finally, Kutik practices what he preaches. He actively participates in the Legal Aid Society's Brief Advice and Referral Clinics, taking on family law matters at these Saturday morning clinics in neighborhoods throughout Legal Aid's service area.

DLA Piper

DLA Piper's pro bono program is widely considered one of the most robust and innovative models among large law firms today. According to The American Lawyer's 2007 pro bono survey, more than 95% of DLA Piper lawyers in the US worked 20 hours or more on pro bono projects, making the firm #1 for pro bono participation in the AmLaw 200 that year. Lawyers at the firm worked an average of 89 hours of pro bono in 2006. DLA Piper has developed innovative strategic projects in partnership with nonprofit organizations, academic institutions, foundations, and corporate clients. Some of DLA Piper's signature projects include: Access to Education, The Fight Against Hunger, and Serving Those Who Serve Our Country.

One project that deserves special recognition is Chicago's Signature Project in Juvenile Justice. This project grew out of the firm's desire to enhance the impact of its pro bono work by concentrating significant resources in a particular area of law. In all, the firm donated over 23,000 lawyer hours, worth nearly \$6.5 million, to representing young people in conflict with the law and to examining particular laws and public policies that impede these young people's abilities to turn their lives around.

Over the past three years, DLA Piper lawyers have zealously represented scores of children in legal proceedings; undertaken a major policy initiative aimed at helping court-involved children return to school; and drafted and introduced legislation in the Illinois legislature that will positively affect thousands of young people's lives.

Pro Bono Increasingly Seen as an Investment, Not a Cost

Annual NLJ survey notes pro bono trends, and spotlights leading firms for their work on struggles that took on particular resonance in 2008

Michael Moline

[The National Law Journal](#)

January 5, 2009

Let the good times roll.

That's the counterintuitive conclusion we draw from our research for *The National Law Journal's* annual Pro Bono Awards.

The towers of finance and industry are toppling, knocking over law firms on their way down. Yet the firms left standing still recognize that their futures depend in large measure on keeping young associates productive, happy and committed, and that pro bono might be a way to do that.

Managers with memories have learned the lessons of the dot-com crash, when firms jettisoned associates and made first-year and summer associates delay their starting dates. Firms cut back on pro bono credit, sometimes entirely. The clear message was that associates overly focused on pro bono had too little real work to do, said Esther Lardent, president of the Pro Bono Institute at Georgetown University Law Center.

"That caused associate grumbling and morale issues, and made people feel even shakier about what the future was at the firm. People lost associates who were feeling at loose ends and invisible," Lardent said in an interview.

"I think most of the firms have learned their lesson," she continued. "What they now understand is that in tough times -- when the issue is permanence and commitment to the firm and thinking long term -- that pro bono is a very important indicator that the firm is on solid ground, that the firm cares for and respects individual lawyers, is about more than just short-term thinking."

Keith C. Wetmore, chairman of Morrison & Foerster, confirmed Lardent's analysis. Even in this economic climate, "I think you'll see stepped-up pro bono," he said. "When you have pockets of slowness" in a law firm, "you want to encourage lawyers to use their time productively, and pro bono is a good place to do that."

Wetmore expects Morrison to perform "significantly higher pro bono hours this year than last."

HOURS UP SIGNIFICANTLY

Fresh surveys of pro bono trends won't be available until later in the year, but data from 2007 confirm the anecdotal evidence. The Pro Bono Institute reported that 135 of the country's largest firms provided nearly 4.3 million hours to pro bono projects in 2007, representing a 170 percent increase since 1995.

[In a separate survey, *The American Lawyer* magazine](#), an affiliate of the *NLJ*, reported in July that the pro bono commitment among its list of the 200 highest-grossing U.S. firms [exceeded 4.8 million hours in 2007](#), an increase of 590,000 hours from 2006. Per capita hours were up to 53.6, an annual increase of nearly 8 percent. The firms surveyed reported that 42.3 percent of their lawyers performed at least 20 hours of pro bono work, a 12 percent increase and a record for the survey.

Applying a blended rate of \$300 per hour, the big firms on the magazine's list contributed approximately \$1.45 billion in billable hours.

The argument about whether pro bono makes business sense for large firms is over, said Robert Dicks, a senior manager at Deloitte Consulting LLP in New York. With large firms at rough parity in terms of compensation, firms understand that an effective pro bono program can cement their reputation as a good place to launch a legal career.

In a report published in November 2008 -- and that will be posted to the deloitte.com Web site this week -- Deloitte cites the National Association for Law Placement's "conservative" estimate that the cost of replacing a defecting associate can exceed a "staggering" \$100,000. At the same time, "two of the top three reasons for associate attrition related to the ability of law firms to connect lawyers to matters and partners focused on their development," Deloitte said, again citing NALP figures.

Against this background, managers at large firms clearly see pro bono not as a cost, but as an investment. Dicks noted that during a recent professional development conference, he addressed a room packed with law firm staff whose sole duty was to manage pro bono programs.

"Firms are starting to do this well -- it's a managed part of their business," he said. "The return comes from doing pro bono efficiently and thoughtfully -- putting the right associates on the right matters to give them the development opportunity they need in their careers."

About the *NLJ* survey: We asked our readers to nominate attorneys and law firms that did the most to uphold the principle that justice shouldn't be contingent on the client's ability to pay.

We looked for firms that had devoted substantial time and money to the cause, and gave bonus points if the nominee risked particular opprobrium by standing up for the despised and rejected.

It was a completely subjective process, and unfortunately we lack the space to recognize all of the firms we admire -- or every firm that participated in a successful collaboration. Morrison, for example, has donated 24,000 pro bono hours seeking government recognition of veterans' post-traumatic stress disorder injuries. (The case is before the 9th U.S. Circuit Court of Appeals.) Meanwhile, Wilmer Cutler Pickering Hale and Dorr argued the habeas corpus rights of "war on

terror" detainees all the way to the U.S. Supreme Court; in November, a federal judge ordered five WilmerHale clients released "forthwith."

We settled on firms engaged in struggles that took on particular resonance in 2008: voting rights, same-sex marriage, refuge for Iraqis who endangered their lives by working with U.S. forces, and reparations for the remaining victims of the Nazis' "ghetto work" program. That last project required creation of a national, even international, network to organize and train volunteers in assisting reparations seekers.

"If that works for Holocaust survivors, why couldn't it work for homeless men?" Lardent noted. "You see this thinking bigger, and thinking strategically."

Lardent gives some credit for this turn to corporate law departments; as they have assumed more pro bono responsibilities, they've brought a business mindset to the game. Law firms used to differentiate between service to individual clients and impact litigation, but "that's old thinking," Lardent said. "You need to provide representation to individuals but you want to do it in a way that lowers the transactional costs of how you do it, and you serve more people."

Following Hurricane Katrina, individual attorneys hightailed it down to the Gulf Coast to help storm victims only to find that they were constantly reinventing the wheel. "What they realized was that their best role was to provide training and materials and contacts into the survivor community," Lardent said.

The future is in pro bono "that focuses on what outcome is there going to be -- pro bono that looks at the obstacles and that tries to solve systemic problems and that is strategic rather than simply tactical," she said. "To help people, but to look at the underlying problem."

RELATED CONTENT:

For more information on the winning firms, see the following stories on The National Law Journal site:

THE WINNING FIRMS

Each year, *The National Law Journal* recognizes the firms that have done the most to uphold the legal profession's responsibility to ensure that people's legal rights aren't contingent on their ability to pay. It is a subjective process, and we unfortunately lack the space to recognize all of the firms we admire. This year, we honor firms engaged in struggles that took on particular

resonance in 2008: voting rights, same-sex marriage, refuge for Iraqis who endangered their lives by working with U.S. forces, and reparations for the remaining victims of the Nazis' "ghetto work" program.

HOLLAND & KNIGHT, MAYER BROWN, PROSKAUER ROSE

[Pending peace, refuge for Iraqis](#)

Eric Blinderman, international legal counsel to Proskauer Rose, had gone to Iraq in March 2004 as an associate general counsel for the Coalition Provisional Authority. Later, he served as chief legal counsel and associate deputy to the Regime Crimes Liaison. In 2007, Blinderman's firm officially became a part of The List: Project to Resettle Iraqi Refugees, a nonprofit organization founded that year to help resettle Iraqis in danger because of their affiliation with the United States. Holland & Knight had already been collaborating with the project, and Mayer Brown signed on this year.

MANATT PHELPS

[Old crime, new model of activist pro bono](#)

When lawyers volunteered at a Los Angeles legal services agency to help Holocaust survivors complete applications for a German reparations fund, it was a good deed. But then the lawyers and the legal aid attorneys did something different. They created a national legal-assistance network that trained hundreds of volunteer attorneys to assist thousands of Holocaust survivors in 32 U.S. cities. Establishing the Holocaust Survivors Justice Network was not merely another good thing: It rewrote the pro bono playbook.

PILLSBURY WINTHROP

[Full-court press for access to the ballot](#)

Firms nationwide were inspired by the historic 2008 presidential election to devote pro bono time to protecting access to the voting booth. Lawyers went to court in several states on voter access issues, most frequently to prevent a voting reform law, the Help America Vote Act, from becoming a barrier to the ballot. The law required states to match voter rolls with another database, usually the registry of driver licenses, to create a more accurate list of voters

HOWARD RICE NEMEROVSKI

[If at first you don't succeed, keep going](#)

Proposition 8 proponents are going to court to invalidate more than 18,000 marriages performed during the 4 1/2 months that same-sex marriage was legal in California. It's another stage of a hard, long slog for Bobbie J. Wilson, one of the Howard Rice Nemerovski Canady Falk & Rabkin attorneys who have been working on the issue ever since Valentine's Day 2004, when San Francisco Mayor Gavin Newsom declared that the state's existing ban on same-sex marriage was unconstitutional, and gay and lesbian couples flocked to the city to get hitched.



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Pro Bono Offers Career Hope in Bleak Legal Market

The news about law jobs is not good these days. The legal job market recently hit a three year low, law firms are dissolving or laying off lawyers, and potential summer associates are finding that job offers are being rescinded before they can accept them. Even for those with job offers in hand or for current junior associates, the job market can seem precarious and daunting. For recent law graduates without jobs the picture is bleak. Besides giving in to despair or waiting for an economic turnaround, there is something that aspiring lawyers and new lawyers can do to improve their chances of getting and keeping a job: pro bono.

Pro bono work is not just about being a do-gooder, gaining legal skills or getting free CLE; it's about becoming a true participant in the legal profession. Volunteering your time and legal expertise pro bono will allow you to see "as a lawyer" how the justice system works (or doesn't), how people interact with the law in their daily lives, from starting a business to trying not to get evicted, and how lawyers make a difference every day. And since you will be becoming a "real" lawyer through your pro bono work, you will gain the kind of experience that you want to be able to present to employers.

"Pro bono is an important part of professional development, as pro bono embraces real case work and legal training, which play key roles in developing one as an attorney," said Marcia Levy, Special Counsel for Pro Bono and Professional Development at [Sullivan & Cromwell](#). "Pro bono and public services are essential to developing professionally."

She added, "In acknowledging the skill development that pro bono can provide, we never lose site of the main focus, which is people who cannot afford legal help or whose interests are underrepresented. When lawyers work with clients who have these needs, they also find that they develop a commitment to pro bono work throughout their career."

For law students, pro bono may be the first opportunity to perform legal work, while providing services essential to legal service organizations. "Pro bono and access to justice are at the core of what it means to be a lawyer," says Susan Feathers, Executive Director for the [Levin Center for Public Service](#). "Through law-related service, law students gain invaluable legal skills, participate in the practice of law, and are inspired to commit to pro bono and public service for life. Increasing collaborations among law students, public interest lawyers, and the private bar are absolutely critical in a time of increasing need and decreasing resources."

Your experiences presenting before a judge, developing a legal theory, drafting documents and examining witnesses can also help to give you an edge over other job candidates or help you in your current job.

"Pro bono work can help you maintain your billable hours to help keep

your job while also providing opportunities to gain or improve your legal skills if you are thinking of making a move in the future," says Maricar Tinio, Director of well-known recruiting agency [Lateral Link](#). "Pro bono is essential for junior associates to access the foundational skills of the legal practice by gaining hands-on experience."

There are a number of ways to get involved in pro bono work:


- (1) For those at law schools and firms with structured pro bono programs, talk to your pro bono coordinator. Pro bono coordinators can assist you in finding volunteer opportunities that will help you develop into a skilled lawyer for whichever type of law you want to practice.
- (2) Contact your local or state bar association. Most bar associations have pro bono programs addressing the legal needs of their local communities with the help of local pro bono attorneys.
- (3) Go online. You can start with the Volunteer Opportunities Guide at www.probono.net/volunteer. Just enter your location and what kind of case you would like to volunteer on and you can connect with organizations that need your help.

[Probono.net](http://www.probono.net) can also help you find free CLE trainings, news articles, specific cases seeking pro bono counsel, and a wealth of pro bono training manuals, sample briefs and pleadings, and other forms to support your pro bono work.

For those who think it is cynical or self-serving to view pro bono as a way to get a job, there is nothing cynical about the experience of connecting to a client and serving the overwhelming need for legal help for people who cannot afford an attorney. The clients you represent are real, the attorney relationships you develop in the process are real, and these experiences stay with you even after the case is over. And there is nothing cynical about being an attorney with a dream job who fulfills the proudest tradition in our profession: pro bono.

Tory Messina is New York Program Coordinator at Pro Bono Net. Prior to joining Pro Bono Net, Tory worked as an Associate at Fried Frank, where she took on both death penalty and asylum pro bono matters. Tory received her J.D. from University of Pennsylvania Law School, where she was involved in the Penn Law Immigration Project, taught Street Law at the Juvenile Detention Center and was on the Board of the Penn Law Chapter of ACS. She can be reached at tmessina@probono.net.

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THE AM LAW PRO BONO 100

Going In Deep

The cases are as diverse as the firms. Gibson, Dunn & Crutcher advised an Olympic caliber windsurfer in a dispute with U.S. Sailing. Chadbourne & Parke helped a Colombian woman reunite with her 9-year-old daughter. Boies, Schiller & Flexner spent more than 7,000 pro bono hours on litigation to force the state of Florida to provide health care for poor kids. Shearman & Sterling continues its multiyear effort to act as the de facto clerk at the Rwanda genocide trials (the firm has devoted roughly 40,000 hours to the cause).

Our first Am Law Pro Bono 100 project takes an in depth look at firms' pro bono matters. We ranked the firms based on their pro bono scores. (Half of the score comes from the average pro bono hours per lawyer; the other half represents the percentage of lawyers who perform more than 20 hours of pro bono work.) Then we talked to each of the top 100 firms about one particular cause they worked on in 2008. To read their stories, click on the firm names in the list below.

THE TOP 100 PRO BONO FIRMS

1. JENNER & BLOCK
2. LATHAM & WATKINS
3. ARNOLD & PORTER
4. DECHERT
5. HUGHES RUBBARD
6. MILBANK, TWEED
7. COVINGTON & BURLING
8. MORRISON & FOERSTER
9. WILMER
10. PATTERSON BELKNAP
11. ORRICK
12. ROBINS, KAPLAN
13. DEWEY & LEBOEUF
14. O'MELVEY & MYERS
15. HOWREY
16. MUNGER, TOLLES
17. DLA PIPER US
18. GIBSON, DUNN
19. HOGAN & HARTSON
20. DEBEVOISE & PLIMPTON
21. DAVIS POLK
22. SHEARMAN & STERLING
23. SKADDEN
24. STEPTOE & JOHNSON
25. FOLEY HOAG
26. SONNENSCHEIN
27. HUNTON & WILLIAMS
28. PROSKAUER ROSE
29. PATTON BOGGS
30. MORGAN, LEWIS
31. AKIN GUMP
32. PAUL, HASTINGS
33. WEIL, GOTSHAL
34. MANATT, PHELPS
35. KILPATRICK STOCKTON
36. WILLIAMS & CONNOLLY
37. NELSON MULLINS
38. MCDERMOTT WILL
39. WHITE & CASE
40. STROOCK & STROOCK
41. CLEARY GOTTLEUB
42. GOULSTON & STORIS
43. KIRKLAND & ELLIS
44. BALLARD SPRAH
45. SUTHERLAND ASBILL
46. BINGHAM MCCUTCHEEN
47. CHADBOURNE & PARKE
48. ARENT FOX
49. DICKSTEIN SHAPIRO
50. COOLEY GODWARD
51. DORSEY & WHITNEY
52. CROWELL & MORING
53. FAEGER & BENSON
54. LOWENSTEIN SANDLER
55. PEPPER HAMILTON
56. FOLEY & LARDNER
57. KAYE SCHOLER
58. CRAVATH
59. SULLIVAN & CROMWELL
60. ROPES & GRAY
61. ALSTON & BIRD
62. IRELL & MANELLA
63. KRAMER LEVIN
64. SIDLEY AUSTIN
65. SIMPSON THACHER
66. SCHIFF HARDIN
67. FRIED, FRANK
68. SAUL EWING
69. BELL, BOYD
70. HOLLAND & HART
71. PAUL, WEISS
72. MAYER BROWN
73. WINSTON & STRAWN
74. CADWALADER
75. NIXON PEABODY
76. REED SMITH
77. SNELL & WILMER
78. QUARLES & BRADY
79. CHOATE, HALL
80. MCKENNA LONG
81. MCCARTER & ENGLISH
82. PERKINS COIE
83. MINTZ, LEVIN
84. CAHILL GORDON
85. TROUTMAN SANDERS
86. CARLTON FIELDS
87. BAKER & MCKENZIE
88. DINSMORE & SHOHL
89. HOLLAND & KNIGHT
90. BOIES, SCHILLER
91. FULBRIGHT & JAWORSKI
92. PILLSBURY WINTHROP
93. BLANK ROME
94. BUCHANAN INGERSOLL
95. BAKER BOTTS
96. JONES DAY
97. WILSON SONSINI
98. VINSON & ELKINS
99. DAVIS WRIGHT
100. BRYAN CAVE

THE PRO BONO REPORT 2009

Overview: Recession-Proof?

As a group, the nation's 200 highest-grossing firms devoted more hours to pro bono than ever in 2008.

For Whose Good?

Pro bono programs too often stress quantity over quality and easy wins over social impact, argues Stanford professor Rhode.

Projects: Six Pro Bono Matters

Up From The Rubble: Robins, Kaplan leads a complex fight to obtain damages for victims of the Minneapolis bridge collapse.

A Hidden Housing Crisis

A year after the launch of an innovative program to encourage foreclosure work in New York, there are few takers.

Change of Venue

Plenty of lawyers put their hearts into their pro bono work, but few have gone as far as Dewey's Alan Howard.

Mexican Revolution

Energized by stints at Am Law 200 firms, lawyers in Mexico are pioneering a pro bono culture of their own.

The Marriage Broker

The fight for gay marriage in Iowa changed the nation's legal landscape—and one lawyer's worldview.

Franchise Players

In last year's general election, Am Law 200 firms took lead roles in protecting the right to vote.

Unmet Needs


This Web-only feature examines areas of unmet pro bono needs, including representing military personnel at home and abroad, helping litigants in family court, and assisting the rural poor.

Methodology: How we Compute the Pro Bono Report Rankings

The Pro Bono Report 2009: Ranking the Firms

We ranked the nation's 200 highest-grossing firms according to their pro bono score.

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... “As I write this, I am preparing to speak at a meeting sponsored by the American Bar Association’s Death Penalty Representation Project. My role is to say aloud what our magazine has been writing for years: that great law firms and lawyers take on important pro bono projects. This isn’t the place to discuss the merits of the death penalty. But surely there can be little or no responsible debate over whether condemned inmates deserve adequate counsel as they appeal their convictions. It’s ghastly that it falls to the private bar to fill some of that shameful gap, but that seems to be the unchanging reality of the death penalty system. I urge you to take on one of the matters. If we believe in the rule of law, then it must extend even to death row. Robin Maher at the ABA, (202) 662-1734, will find appropriate cases for volunteers”...

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Pro Bono Report: Recession-Proof?

Pro bono work usually declines during a downturn. So far, that hasn't happened.

The American Lawyer
By David Bario
July 01, 2009

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A year ago, Lehman Brothers appeared solvent. Bernard Madoff was a trusted name, and the global economic crisis was still called a downturn. Even then, pro bono advocates worried that altruism would be a casualty of hard times at the country's top law firms.

Judging by firms' performance last year, those fears may have been unfounded. As a group, the nation's 200 highest-grossing firms devoted more hours to pro bono than ever. Nearly half of Am Law 200 lawyers committed 20 hours or more to pro bono last year, and on average, lawyers spent more than 60 hours on pro bono matters.

In the past, both recessions (such as the one in the early nineties) and periods of intense economic growth (such as the dot-com boom in the late nineties) have caused firms to cut back on pro bono. But the explosion in this type of legal work since 2004 has shown little sign of letting up. Pro bono may not transcend firm economics, but it's been able to resist the most recent boom-and-bust cycle. Why?

Pro bono specialists at firms, nonprofits, and academia point to several factors. The institutionalization of pro bono at both firms and nonprofits has continued, spurred in part by the Pro Bono Institute's Law Firm Pro Bono Challenge and by our A-List rankings (see "Power Shift: 1). A younger generation of lawyers at top firms expect pro bono work to be a central part of their careers. And the casualties of 9/11 and Katrina and upheavals over Guantánamo and the environment brought new lawyers into the pro bono ranks.

The boom that sent firm revenues and profits skyrocketing in the 1990s forced pro bono into retreat. The average amount of time that lawyers at Am Law 100 firms spent on pro bono work declined by 13 percent between 1995 and 2000, from 44.1 hours per lawyer to 38.4. (The American Lawyer did not begin tracking per-lawyer pro bono averages at Second Hundred firms until 1998.) "It was such a go-go period that you couldn't wing out excess capacity for pro bono," says Esther Landert, president of the American Lawyer's Institute at Georgetown University Law Center. By 2006, the average pro bono contribution by Am Law 100 lawyers had risen 87 percent, to 71.8. Lawyers at Second Hundred firms increased their average contributions from 29 hours in 1998 to 33.2 in 2008.

Pro bono faced new challenges after the Internet bubble burst. The arrival of \$160,000 [associate](#) salaries and the financial impact of 9/11 forced firms to hunker down, and the amount of time that Am Law 200 firms devoted to pro bono increased only slightly. Says Landert, "Both upturns and downturns can be somewhat difficult times for pro bono."

Or at least they used to be. After enjoying double-digit or near-double-digit growth through 2007, in 2008 Am Law 100 firms recorded their worst financial performance since the first Bush presidency. Second Hundred firms suffered as well. Yet the commitment to pro bono has increased substantially in the past five years.

"The difference now is that firms understand the institutional importance of a healthy pro bono program," says Kimball Anderson, who founded Winston & Strawn's pro bono committee in 1977 and has chaired it ever since. Anderson says that the creation of the A-List in 2003 helped drive the change, since that designation had marketing and recruiting value. "Some might say [The American Lawyer's] profit and revenue rankings have had a pernicious effect on the profession," says Anderson. "In the pro bono area, the rankings' effects have all been good." (A firm's pro bono performance counts for one-third of its A-List score.)

During the recession of 1990-91, Anderson says his firm saw pro bono as incompatible with an urgent need to increase billables. Now firms are more likely to see pro bono work as a way to take up slack when billables are down, says Anderson, who expects pro bono numbers at Winston & Strawn will be "way up" in 2009. Last fall, the outgoing executive partner at Skadden, Arps, Slate, Meagher & Flom encouraged lawyers in the firm's New York office to take on pro bono projects if their practices slowed down. "Our monthly rates of increase in pro bono hours were already significant before that, but they've grown even bigger since," says Ronald Tabak, Skadden's special counsel for pro bono.

The institutionalization of pro bono, a process that began decades ago with the creation of committees like Anderson's at Winston & Strawn, has progressed to the point that it's almost unremarkable. Many Am Law 200 firms now have a full-time staff running their pro bono infrastructure or partners whose only responsibility is to the firm's pro bono program. "It used to be that firms would respond serendipitously to whoever knocked on their door," says Robert Juceam, another early pro bono pioneer who has practiced at Fried, Frank, Harris, Shover & Jacobson since 1966. "Now they look at what's needed and seek that work out."

Juceam and others say that a symbiosis has developed between law firms and the nonprofits that refer and coordinate pro bono work. As executive director of Human Rights First, Elisa Massimino has worked with pro bono attorneys from dozens of Am Law 200 firms, particularly on asylum cases. She says better infrastructure has made working with firms much easier over the past six or seven years. "There's better organization on both sides of the relationship, and that makes pro bono a more productive enterprise," she says.

Firms—and a younger generation of lawyers—have also become more ambitious in the types of projects they consider, says Miriam Buhl, pro bono coordinator at Weil, Gotshalk & Manges. When Buhl first met with Weil's pro bono committee members five years ago and asked if they wanted to concentrate on a single area, they said no. "They said, 'We want to make new law.' " Betty Cavendish, executive director of Aplettseed, has seen the evolution on the nonprofit side as well. "As the law firms have gotten larger and more sophisticated, we're learning how to take advantage of those resources and find the best ways to use that talent at a significant level," she says.

With the machinery and the appetite firmly in place, the past eight years have provided plenty of grit. Mitchell Bernard, litigation director for the Natural Resources Defense Council, says his organization filed 71 cases in the first two years of the Bush administration, many of them drawing on pro bono lawyers (Bernard estimates that close to a dozen firms commit pro bono time to NRDC each year). At Alvin Gump Strauts Hauer & Field, pro bono partner Steven Schulman says he saw a similar increase in pro bono work on asylum cases.

Whether the issue was Guantánamo, asylum, the environment, or privacy, firms found ways to get in on the action. Says Juceam: "Every time there is public outrage, there is a pro bono aspect—if not in the courtroom, then in a policy matter. In the last eight years, there has been a lot of outrage." Whether outrage translated into more hours may be open for debate, but it's clear that the zeitgeist of the Bush era energized much of the pro bono bar. Janet Reno promoted pro bono through U.S. Department of Justice initiatives; her immediate successors were targets of pro bono litigation.

For years, Bingham McCutchen [associate](#) Jason Pinney has been pro bono counsel for a Boston nonprofit that mentors and coaches city kids through a lacrosse league; he devotes a few hours a year to the organization. But since 2005, Pinney has also represented a group of Uighur inmates at Guantánamo whose cases became central to the legal battle over the prison. He's already logged more than 2,100 hours on the project. Pinney, now a sixth-year [associate](#), says the experience changed his view of pro bono, making it a more fundamental part of his career. "If it had just been me and MetroLacrosse, I might not have that perspective," he says.

According to pro bono advocates, the lesson isn't that lawyers were engaged in a war on the Bush administration. Sometimes firms showed great reluctance to take on the administration, especially when it came to representing terror suspects immediately after 9/11. The point is that lawyers who had the opportunity to tackle significant pro bono matters—and the legal battles of the past eight years have certainly been significant—are likely to stay engaged with pro bono throughout their careers.

Vincent Warren, who helped oversee the efforts of more than 500 pro bono lawyers for Guantánamo detainees as executive director of the Center for Constitutional Rights, says Pinney's experience is typical. "These cases profoundly changed the lives of the lawyers who were involved," he says. In a similar fashion, lawyers who aided victims of 9/11 and Katrina have tended to remain involved in pro bono work, says Patricia Bramman, pro bono partner at Hogan & Hartson. "People really keep going back," she says.

Depending on how bad things get, the spiraling economy could still undermine pro bono's gains. No amount of infrastructure can save pro bono programs at failing firms. Former Thatcher Proffitt & Wood pro bono chairman Walter Van Don, Jr., says that as the firm collapsed in 2008, its lawyers were working on their resumes, not pro bono projects. While some firms may be able to move associates to pro bono work when billable hours are scarce, many will continue to have no choice but to lay them off instead.

The shift in power in Washington, D.C., presents new challenges too. "Obama and Bush are demonstratively very different, and some people are adopting a wait-and-see attitude in terms of how the needs may have changed," Warren says.

For others, particularly on the right, the advent of the Obama era may signal a pro bono renaissance. "When people think a president supports their values, they have a tendency to take a seat on the sidelines," says Glen Levy, senior counsel at the Alliance Defense Fund, a nonprofit that promotes conservative Christian causes. Last month the group held its annual litigation academy, a free week of training in exchange for a commitment from participating lawyers to devote 400 pro bono hours to one of its causes. Usually the course doesn't fill up until nearly summer. This year, Levy says, all 100 seats were booked by February.

Also See:

Pro Bono Report 2009: Ranking The Firms

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We appreciate that you have asked [law firm name] to represent you in connection with your post-conviction petitions to set aside your conviction and death sentence. This letter sets forth the terms of our proposed representation.

As to the nature and extent of our representation, we are willing to represent you for the limited purpose of assisting and counseling you in connection with your state court and, if necessary, federal court petitions to set aside your conviction and sentence rendered in [insert county] County, Alabama as well as any appeals or certiorari petition. We have not agreed to represent you with respect to any other matters.

You are engaging [law firm name] to provide legal services in connection with the specific matter set forth above. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. You have agreed that, unless you specifically engage us after the completion of the matter to do so, [law firm name] has no continuing obligation to advise you with respect to future legal developments.

Attorneys' Fees

Basically, we have agreed to handle this matter free of charge by agreeing to waive our customary hourly fees based on your inability to pay. Also, you will not be asked to bear the costs of any expenses associated with the litigation such as discovery expenses, duplicating costs, subpoena and witness fees and transcript expenses, given your financial condition. We may, however, seek attorneys' fees from the State to the extent authorized by statute or in a negotiated settlement. Our recovery of any attorneys' fees would be contingent upon an actual award of fees, or the finalization of a settlement.

Disclosure of Conflicts of Interest

[Law firm name] has many other clients throughout the world including private individuals, corporations, and government agencies. We have conducted a search of our records and do not believe that our representation of you is in conflict with our representation of such clients. However, if at any time our handling of this matter should be inconsistent with our representation of other [law firm name] clients, we reserve any rights we may have to withdraw from this representation. In such a case, you will have to find another law firm to represent you. Under those circumstances, you will not seek to disqualify [law firm name] from representing the other client despite such conflict.

You should also understand that we are willing to represent you on the assumption that you will be honest and cooperate fully with us, and will provide whatever information and documents we need in order to do good, professional work.

If the foregoing correctly reflects your understanding of the terms and conditions of our representation, please indicate your acceptance by signing the enclosed copy of this letter in the space provided below and returning it to me.

We are pleased to have the opportunity work with you.

Sincerely yours,

[attorney]

AGREED TO AND ACCEPTED:

[client]

[DATE]

[VOLUNTEER LAW FIRM/ADDRESS]

Re: [NAME OF CLIENT - LOCATION]

Dear [Name] and Team,

Thank you for agreeing to work with [LOCAL COUNSEL CONTACTS] on [NAME OF CLIENT] case. We are grateful that [FIRM NAME] has chosen to volunteer its skills and time to someone in desperate need of assistance.

We understand that your firm will work primarily with ____ at the ____ capital Resource Representation Center. You should continue to seek his guidance throughout your representation of _____. As experienced capital defenders, he and his colleagues can provide excellent information, resources, and advice on strategy.

To help you get started, we are sending some materials which are meant to provide you with a general overview of the habeas process. The [LOCAL COUNSEL CONTACT] may have additional materials appropriate for this matter. Please note that there may have been case and statutory developments since these materials were published; you should check with [LOCAL COUNSEL CONTACT], or one of his colleagues before relying on any of them.

In the upcoming week, you will be admitted to the Project's confidential death penalty practice area, www.probono.net/deathpenalty. You will receive an email from the site's administrator with your username and password. The site contains sample pleadings, a summary of recent successful ineffective assistance of counsel claims, an extensive library of materials, a calendar of training events and seminars, and other helpful resources.

The library contains links to the 2003 ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. The Guidelines not only set forth what is necessary for defense lawyers in capital cases, but may also help you investigate and present an ineffective assistance of counsel claim in your case. Other members of your firm's team should also feel free to join as members of Probono.net by following the directions on the website. Additional resources are available on our site, www.abanet.org/deathpenalty.

We want to be helpful to you, so please don't hesitate to contact us if you need additional information, referrals or resources. Thank you again for your assistance.

Warm regards.

Robin M. Maher, Esq.
Director
Enclosure

ABOUT THE PROJECT

The ABA Death Penalty Representation Project works to address the crisis of counsel in the death penalty system. As one of its primary goals, the Project seeks to expand the pool of lawyers willing to serve as pro bono counsel for death row inmates in post-conviction proceedings by recruiting competent volunteer attorneys to handle capital cases and providing training and assistance to them. The Project also works to educate the public and bar about the crisis of counsel and to reform the systems that provide lawyers to indigent defendants.

Recruitment

To date, the Project has recruited close to 200 firms to act as volunteer counsel in capital trial or post-conviction cases. The Project has held firm recruitment meetings in Albuquerque, Aspen, Atlanta, Austin, Baltimore, Baton Rouge, Boston, Chicago, Cincinnati, Dallas, Delaware, Denver, Detroit, Houston, Indianapolis, Kansas City, Los Angeles, Madison, Milwaukee, Minneapolis, Nashville, New Orleans, New York City, Palo Alto, Philadelphia, Portland, San Francisco, Seattle, St. Louis, Washington DC and Wilmington. The Project has also recruited firms to work on appellate briefs, petitions for certiorari, direct appeals, ABA Supreme Court amicus briefs and challenges to lethal injection and prison conditions. More recently the Project has recruited pro bono firms to handle challenges to new federal opt-in regulations and has expanded its work to include systemic litigation.

ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases

In April 2001, the ABA Death Penalty Representation Project sponsored a project to revise the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* ("ABA Guidelines"). The original Guidelines, approved in 1989, were revised to reflect numerous legal developments that occurred in the intervening years. The 2003 Guidelines have become the leading standard of care in the defense of death penalty cases and are regularly cited by state and federal courts, including the U.S. Supreme Court.

Training and Education

The Project Director participates in numerous training seminars each year and speaks at bar meetings, law schools, and conferences about the Project's work. The Project also supports training programs and educational seminars at all levels of capital representation. We sponsor capital defender trainings throughout the country and offer financial assistance to capital defense attorneys to attend these events.

Staff and Resources

The Project has a full-time staff with a director, two staff attorneys and a project assistant and provides volunteer counsel with a number of resources to assist with their cases. Project staff administer the Death Penalty Practice Area at www.probono.net. The Project's confidential, password-protected practice area provides guidance, resources and substantive materials, with a particular focus on state post-conviction proceedings. The library includes documents of general interest, international law and state-specific materials, amicus briefs, clemency materials and a list of all state and federal cases citing to the ABA Guidelines. Project staff also work closely with the defender community and recruited counsel to provide more resources and assistance as necessary. The Project also works closely with the Habeas Assistance and Training Counsel of the Administrative Office of the U.S. Courts to provide seminars and materials to lawyers handling cases.

Understanding The Costs of Capital Post-Conviction Representation

Each death penalty case involves unique circumstances and facts, and the costs involved will vary widely based on a number of factors, including the jurisdiction where your client is incarcerated and the specific issues you will raise. For these reasons, we cannot assess in advance what your actual costs will be. However, several of the most common categories of expenses are listed below.



Utilize Your Strategic Advisor!

The best way to reduce the costs of capital representation is to consult early and often with your strategic advisor. Doing so will help you avoid unnecessary research or investigation and help you focus on the most promising issues. Your advisor will be an invaluable asset to your team at every stage of the representation, saving you both time and resources.

Attorney Travel

Almost every case will require at least some out-of-pocket expenses for attorney travel. This cost can be moderated by utilizing local counsel and investigators for routine court filings and in-person investigation. Some of the various reasons attorneys need to travel include:

- Meet with the client
- Interview jurors
- Interview witnesses
- Interview family members and others for mitigation development
- Conduct factual investigation (visit crime scene, retrieve records, etc.)
- Conduct evidentiary hearing
- Argue motions

Evidentiary Hearing

In state post-conviction cases, your goal is to obtain an evidentiary hearing where you can develop the new evidence that will be used to argue for relief. This is your best and perhaps only chance to create a record of the errors and evidence in your client's case. The record you create in state court proceedings will be the record the federal courts review in federal habeas. This hearing is like a trial so you should expect to incur expenses things like exhibits, photocopying, and expert testimony.

Experts

One of the biggest costs you will incur in your representation of a death row inmate is expert fees. It is almost impossible to determine in advance how many and what types of experts will be necessary for any given case, but some of the common experts needed in many death penalty cases are listed below:

- DNA Expert
- Experts in other human physical evidence (including fingerprints, bite-marks, and hair samples)
- Crime Scene Reconstructionist
- Ballistics Specialist
- Forensic Psychiatrist
- False Confession Expert
- Mental Retardation Expert
- Neurologist
- Expert capital defender (for ineffectiveness claims)

There are several ways you can reduce the cost of expert witnesses. Choosing a case where actual innocence is not a factor can reduce costs because cases involving the testing of DNA and other physical evidence to prove innocence are often the most expensive. A few experts will work for a reduced fee in death penalty cases. There are also certain jurisdictions where it is more likely that the court will provide some funding for experts. All counsel are encouraged, regardless of jurisdiction, to seek payment for expert expenses from the court.

Investigators & Mitigation Specialists

At least one investigator and one mitigation specialist will be an essential part of your defense team. Very few of our cases were adequately investigated at trial. It is absolutely essential that post-conviction counsel conduct a thorough, in-depth investigation of both the client's background and the facts of the crime, regardless of what the trial transcript or trial counsel suggests. Investigators and mitigation specialists have the skills and experience to efficiently gather the necessary information. There will be other tasks, such as gathering records and interviewing witnesses, that junior associates and legal assistants can handle.

For additional information about costs and the cases we are currently seeking to place, please contact the Project at 202-662-1738 or deathpenaltyproject@staff.abanet.org.

Resources For Volunteer Attorneys

The ABA Death Penalty Representation Project is committed to providing its volunteer attorneys with the best possible resources. These are a few of the types of resources we provide:

- **Strategic Counsel** — Perhaps the single most important resource for a volunteer firm is its strategic counsel. These experienced capital defenders can provide invaluable advice about strategy, investigation, and experts. Making use of strategic counsel can save the firm valuable time and resources throughout the case.
- **ABA Introductory Training Materials** — Upon agreeing to represent a death-sentenced prisoner, every firm receives a copy of the Project's training materials. This packet includes materials gathered from experts in the defender community and provides an introduction to the world of capital post-conviction work. The firm's strategic counsel will have additional training materials that are the most up to date and specific to the jurisdiction in which the firm is working.
- **Probono.net Library** — All volunteer attorneys are strongly encouraged to join our secured practice area at <http://www.probono.net/deathpenalty>. There you can access a library of over 1000 documents related to death penalty representation.
- **Defender Community** — The capital defender community is comprised of wonderful, talented lawyers who are eager to help their colleagues. Volunteer attorneys are encouraged to join the Habeas Listserve moderated by Professor Eric Freedman where they can connect with and seek advice from this community. The Project is also in the process of organizing brown bag lunches in major legal communities throughout the country where volunteer attorneys can meet and discuss their cases.
- **Training Conferences** — There are numerous training conferences held throughout the year in locations around the country. The Project notifies its volunteer firms about the best training opportunities and encourages volunteer attorneys to attend.
- **Project Staff** — The Project staff are committed to assisting our volunteer attorneys in any way we can. We are always available to locate additional resources and advisors for firms.



1. **Why is there a nation-wide shortage of qualified lawyers to represent individuals under sentence of death?**

There are three primary reasons for the current crisis:

- **Supreme Court case law allows states to deny individuals court-appointed counsel at the state post-conviction level.**

The U.S. Supreme Court has never recognized a constitutional right to counsel for indigent death row inmates seeking post-conviction relief in state or federal court. Through its amicus curiae briefs and resolutions, the ABA has repeatedly urged the Court to acknowledge this constitutional guarantee. (More information about the ABA's policy positions and amicus briefs in support of the right to counsel is available by going to the section of our practice area library where copies of some of our recent amicus briefs are posted. The briefs include references to ABA studies and resolutions regarding capital punishment.)

- **In 1995-96, Congress eliminated all federal funding for the post-conviction defender organizations (known as "resource centers").**

During 1995-96, Congress eliminated all funding for the 20 capital post-conviction defender organizations known as "resource centers." The resource centers served three vital functions. Their trained attorneys provided direct representation to many death-sentenced prisoners. The offices also assisted pro bono firms and appointed counsel in hundreds of cases. Lastly, the centers monitored the progress of cases from conclusion of trial through clemency to ensure that claims were not forfeited by inexperienced counsel and that individuals were not executed without representation or without review of their constitutional claims.

Only a handful of states now directly support a capital post-conviction counsel office and even fewer provide funding at the same level that had been appropriated by Congress. One compelling example is Pennsylvania, which, after losing federal funds for the resource center, refused to spend any money for capital post-conviction attorneys to represent those on death row, but has consistently allocated \$500,000 annually for prosecutors who are assigned the responsibility of opposing death penalty post-conviction and habeas applications.

Almost every state now makes some provision for appointment of counsel once a pro se application for habeas relief is filed by a death row prisoner. However, very few states require that appointed lawyers have sufficient experience and skill to handle this complex and time-consuming litigation, and few compensate lawyers with more than token fee payments or provide reimbursement for the substantial costs that must be incurred to investigate, prepare and litigate state post-conviction claims.

The number of jurisdictions with death-sentenced prisoners who lack adequate legal representation is growing at an alarming rate. There are currently 3300 persons on death row in the United States and 99.5% of them are indigent.

- **The Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 set a one-year statute of limitations on the filing of federal habeas petitions.**

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was passed with the goal of speeding up executions and restricting access to federal review of state convictions. For the first time in our history, there is a statute of limitations on the filing of federal habeas corpus actions. For many inmates, the clock is now ticking under the AEDPA, but these unrepresented individuals have no way to stop the federal clock and preserve their federal constitutional claims by filing a petition for post-conviction relief in state court.

The ABA strongly opposed the AEDPA and has, in its resolutions and amicus briefs, argued that provisions of the AEDPA unduly restrict the jurisdiction of Article III judges by requiring deference to a state court on a question of federal constitutional law.

2. What is the ABA Death Penalty Representation Project doing to address the critical shortage of qualified lawyers for individuals facing execution?

The Project's work includes:

- Working with national and state criminal justice groups, bar associations and other organizations to implement the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003) in all death penalty jurisdictions. The Guidelines set forth a national standard of care in death penalty cases in order to ensure that capital defendants receive high quality legal representation at all stages of the process;
- Underwriting regional and national capital training programs and providing scholarships to prepare pro bono and appointed counsel to handle capital cases at trial, on appeal and in post-conviction proceedings;
- Educating and soliciting support from members of the judiciary and the bar by speaking at judicial conferences and national criminal justice organization meetings about the ABA Guidelines;
- Utilizing our confidential web site practice area to make resources readily available to pro bono and appointed counsel who are representing persons facing the death penalty;
- Meeting with private law firms around the country to discuss the need for pro bono representation of death-sentenced prisoners. To date, the Project has recruited close to 200 firms to act as volunteer counsel in capital trial or post-conviction cases;
- Supporting legislative efforts such as the Innocence Protection Act, which would provide badly needed funds for capital defender systems;
- Filing systemic litigation challenges in jurisdictions that fail to invest properly in defender systems, fail to enforce standards for defense counsel, or otherwise deny essential resources and expert assistance to

the defense; and

- Assisting in the drafting of *amicus curiae* briefs to the U.S. Supreme Court. For example, the Project was recently involved in submitting a brief in *Medellin v. Texas*, U.S. Supreme Court, No. 06-984, June 2007 and *Schriro v. Landrigan*, U.S. Supreme Court, No. 05-1575, December 2006

3. **How can civil litigators successfully represent a death-sentenced prisoner?**

One reason for the success of civil firms in this area is that those facing death often received inadequate representation from the lawyers appointed to defend them at trial. Frequently, these lawyers were paid only token amounts to handle the cases. Many were inexperienced or incompetent. Some individuals were represented by counsel who were trying their first cases, were senile or intoxicated, were ignorant of governing law, used racial slurs to refer to their clients, slept or were absent during crucial parts of the trial, and were denied or never requested any investigative or expert assistance. One of the most rewarding aspects of handling a habeas case is the opportunity to unearth and present meritorious defenses and mitigating evidence that were not developed at trial, and afford a client the vigorous advocacy he or she never received.

As we discuss below, death penalty cases are challenging, complex and time-consuming. They require litigation with the level of skill and resources to which mid- and large-size firms are accustomed.

The substantive criminal law will be new to civil litigators, as will many aspects of investigating, preparing and presenting capital post-conviction claims. However, though considered a criminal or quasi-criminal proceeding in some jurisdictions, habeas corpus is essentially a civil action. In federal court, in particular, the rules affecting pleadings, discovery and proof will be quite familiar. There are arcane and ever-evolving aspects of federal habeas procedure that are difficult for everyone who takes a case, including experienced criminal defense lawyers. Nonetheless, this is a challenge civil law firms routinely overcome.

4. **At what stage of the proceedings should my firm become involved?**

In some jurisdictions, such as Texas, the post-conviction process runs concurrently with the direct appeal. In those circumstances, we urge firms to become involved shortly after the conclusion of trial. In most states, however, post-conviction proceedings commence after the conclusion of the direct appeal. In these states, law firms are encouraged to take a case as soon as possible after the direct appeal has been denied.

When state habeas relief is denied by the state court -- and you must assume it will be -- your firm will be expected to follow the case through proceedings in federal court and through clemency, if all habeas efforts fail. Given the time limits that apply in some state and all federal habeas proceedings, the earlier your firm enters the case, the better. There may even be an advantage to having your firm prepare the petition for writ of certiorari. This will depend upon the case you take and the advice you receive from the capital representation office to which we refer you.

In years past, volunteer counsel often waited to take a case until it reached the federal habeas stage. A number of developments, most significantly, passage of the AEDPA make it imperative that, if the option is available, your

firm handle the state post-conviction proceedings. The AEDPA provides a one-year statute of limitations for the filing of federal habeas corpus actions from the conclusion of the direct appeal. This period is tolled during the pendency of the state post-conviction proceeding. However, depending upon when the state petition was filed, the time in which to apply for federal habeas relief may be considerably shorter than a year. The strategic choices involved in coping with the changes in case and statutory law are more complicated than can be covered here. There is no doubt, however, that the earlier your firm enters the case, the greater the client's chances of success. There is another reason to become involved at the state habeas stage. It is critical that a thorough and detailed record be developed in state court. Too often, an incomplete and undeveloped record during state proceedings leaves the federal court without any basis to grant relief. This task is ideally suited to law firms that can invest the necessary resources and personnel in this effort.

5. What claims are most often raised in capital habeas petitions?

Because of limitations imposed by statute and case law, not all legal issues raised on appeal are cognizable in habeas corpus proceedings. Complete familiarity with the trial and appellate record is essential, but this is only a starting point. The purpose of a petition for writ of habeas corpus is to permit an extra-record examination of the case to develop evidence that the defendant was denied basic due process at the guilt and/or penalty phase of the trial and/or on direct appeal.

In evaluating the government's case, you will be searching for exculpatory evidence that might have been suppressed or was not discovered by the trial attorney. For example, did any of the state's witnesses -- especially informants -- commit perjury? Were informants given compensation or deals in pending cases that were not revealed to the defense? Did the prosecution conceal evidence that an eyewitness had changed his or her mind about an identification? Was there a failure to conduct scientific testing of physical evidence or is there reason to believe the testing was unreliable?

Your firm will be investigating both the underlying charge and the client's life history to ascertain what evidence counsel failed to present at trial that might reasonably have resulted in an acquittal, conviction of an offense less than capital murder, or most important, what evidence in mitigation was not presented that might have led to a sentence other than death? When, as too often occurs, trial counsel has conducted virtually no investigation, the defense team will be interviewing witnesses to the underlying offense and examining the client's family, medical and education history, and records of previous convictions and incarceration that might disclose evidence of mental illness, neurological impairment, mental retardation, and sexual and physical abuse. These social history investigations are unquestionably time-consuming, but properly supervised by an experienced capital case investigator or mental health professional, student interns can do much of the leg work such as locating, gathering and summarizing records. Given the likelihood that trial counsel did not undertake the necessary exploration of your client's background, these investigations yield a wealth of compelling information.

In many states, there are statutory time limits in which to file your initial petition and the AEDPA severely restricts the period in which the federal petition must be filed. Changes in state and federal law mean that the first round of habeas litigation is probably the only round. The availability of discovery proceedings varies from state to state. The importance of thorough investigation and presentation of claims in the state petition cannot be

overemphasized. Evolving procedural rules in federal court may well preclude consideration of any other claims. Depending upon the particular claims you raise, there may be an evidentiary hearing in state court. Because of limitations imposed by the AEDPA - many of which are still the subject of litigation - you must anticipate the government will take the position, once you are in federal court, that the client is not entitled to another hearing.

6. How should my firm select a case?

In some states there is a particularly urgent need to enlist firms. We recognize that a number of factors, including geography, timing, staffing and possible legal issues will affect a firm's decision. What the Project cannot do is identify the "winning case." Every time a firm agrees to represent a death row prisoner, it takes an important step in winning the battle for due process and equal justice for that individual.

Because these cases have often been so poorly handled at trial and on appeal, neither the brief summaries we can send you nor a review of the opinion on direct appeal are complete or reliable predictors of the potentially meritorious claims. The most compelling issues and evidence will not be discovered until you begin your investigation. Once you have decided to accept a case, but before you select a client, the resource counsel can provide you with more information than is provided with the summary case.

7. Can the firm expect payment for any attorney hours or out-of-pocket expenses?

Particularly because we are asking you to take a case in a state that pays no attorney fees or only token amounts, you must assume that there will be little or no compensation for billable hours or costs incurred at the state post-conviction stage. Georgia, for instance, provides no fees or reimbursement at the state post-conviction stage. If appointment and compensation are possible, one of our resource counsel with whom you are working will advise your firm how to proceed. Even if appointment at the state level is possible, the fees and money available for out-of-pocket expense reimbursement will usually be nominal. Although non-payment may be the norm, your firm may decide to challenge local or statewide practice. This is a strategic decision that should be discussed with the resource counsel. Ultimately, however, the firm is undertaking a substantial pro bono commitment, especially in state court.

By statute, lawyers who are appointed in federal court are paid, at a maximum, an hourly rate of \$163.00. The federal statute also authorizes reimbursement for necessary expenses such as investigators and expert witnesses. The firm cannot, however, postpone any necessary state post-conviction investigation or expert evaluations with the expectation of being compensated later in federal court. The doctrine of exhaustion requires you to develop and raise all federal constitutional claims and supporting evidence in state court. If you fail to do so, it is likely those claims will be barred from consideration by the federal court.

8. How many hours will the case take and how much will it cost the firm?

As much depends upon the case you accept, its procedural posture and the jurisdiction in which the case is pending, it is impossible to predict the number of hours and the costs to the firm with any precision. There are differences in post-conviction practice and procedure in each state that will affect matters such as statutory deadlines and costs. Like any litigation, post-conviction practice involves periods of intense activity interspersed

with what may be months during which the demands on the firm's resources will be minimal.

There is no question, however, that capital post-conviction cases are time-consuming. Over a period of years, in state and federal court and, if necessary, in clemency, your firm may well devote 2,000 hours. The lawyers whom the Project has recruited in the past would be pleased to talk with you about how they have staffed and managed their cases. The Project can also refer you to lawyers at firms in your own community to answer these questions.

9. Do members of the firm need training in capital post-conviction representation and, if so, what types of programs are available?

There are excellent opportunities for you to learn the skills needed to successfully handle a capital post-conviction case. Each year there are several national, and nearly a dozen regional CLE programs presented by criminal defense organizations and capital defender offices. The Project contributes financially to many of these seminars and can help find the right training program to assist you.

The Project initiated its "resource counsel" program with the goal of ensuring that pro bono firms receive guidance from experienced lawyers in the field. If you accept a case, attorneys at the non-profit capital representation offices will assist you in any number of ways so that the firm's resources -- both attorney time and out-of-pocket expenses -- are used appropriately. They can help locate experienced investigators, mitigation specialists and mental health experts, and assist you in making important strategic decisions. The Project's Director is also available to confer with you and members of your firm about any of these issues.

The intricacies of federal habeas practice are detailed in several outstanding texts, including Habeas Corpus Practice and Procedure by Profs. James Liebman and Randy Hertz (Lexis), and Habeas Corpus Checklists by Prof. Ira Robbins (West), which should be added to your library.

The goal of our state-by-state library is to make manuals and sample pleadings relevant to state post-conviction litigation available to you as quickly as possible.

If you agree to represent a client, you will be given access to the Probono.net's confidential web site, Probono.net/deathpenalty.

The practice area contains a link to the Capital Defense Network where you will find a Habeas Assistance Training Project (HAT) component that includes case law summaries, on-line litigation guides, and important updates for federal habeas practice. HAT is a program of the Defender Division of the Administrative Office of the U.S. Courts that is specifically designed to support lawyers handling federal capital habeas cases.